

EXHIBIT C

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK:

3 -----x
4 ALTERRA AMERICA INSURANCE CO.,

5 Index:
6 652813/12E

7 Plaintiff,

8 -against-

9 NATIONAL FOOTBALL LEAGUE, et al.

10 Defendant.

11 -----x
12 DISCOVER PROPERTY & CASUALTY COMPANY, et al.,

13 Plaintiff, Index:
14 -against- 652933/12

15 NATIONAL FOOTBALL LEAGUE, et al.,
16 -----x

17 60 Centre Street
18 New York, New York 10007
19 April 29, 2019

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22 B E F O R E:
23 HONORABLE ANDREA MASLEY, Justice

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26 A P P E A R A N C E S:

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43 - Proceedings Continue Next Page -

1 A P P E A R A N C E S:

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Tal R. Hahn,
Senior Court Reporter

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1 THE COURT: Good morning. Please be seated.

2 In the matter of Alterra America Insurance against the
3 NFL.

4 Who do we have at the table? For the
5 plaintiff?

6 MR. SCHAFLER: Well, the nonparty. We are
7 the nonparty --

8 THE COURT: For the movant.

9 MR. SCHAFLER: Seth Schafler, Proskauer Rose.
10 And my colleague, Steven Holinstat, from Proskauer
11 also.

12 THE COURT: Okay. And -- yes?

13 MR. DOLIN: Mitchell Dolin for the NFL and
14 NFL Properties, your Honor.

15 THE COURT: Okay.

16 MR. CARROLL: Good morning, your Honor.
17 Chris Carroll for TIG Insurance Company, United States
18 Fire Insurance Company and North River. And
19 extensively, your Honor, I am liaison counsel for the
20 insurer. So I will speak on behalf of the insurers.

21 MR. SIMPSON: Heather Simpson, your Honor,
22 also on behalf of the insurers.

23 THE COURT: Okay. So why don't we start with
24 the movant. I looked through your papers briefly. But
25 Mr. Schafler, why don't you get started?

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1 MR. SCHAFLE: Thank you, your Honor. Seth
2 Schafler representing the thirty-two nonparty NFL
3 clubs. And we are here today asking this Court to
4 issue an Order to Show Cause why the insurers should
5 not be directed to withdraw or stay other proceedings
6 that they commenced, at this point, in twelve other
7 states against eighteen of the clubs which will
8 ultimately would balloon to thirty-two clubs in twenty-
9 two different states around the country; directing the
10 insurers not to commence any other proceedings;
11 consolidating all the proceedings related to these
12 subpoenas which are virtually identical among all the
13 clubs, including two that are in New York, and that are
14 pending in front of Judge Dolinger at this point, into
15 a single proceeding --

16 THE COURT: And you are asking that the -- I
17 think it was an Order that Judge Dolinger issued in
18 mediation for a special referee for the discovery --
19 you are asking that those -- those same parameters
20 apply to the nonparties, is that right?

21 MR. SCHAFLE: Well, to the extent that there
22 was overlap in those rulings, which we do think, and
23 obviously those rulings are on appeal to this Court and
24 will be heard ultimately by this Court, but our concern
25 is that to the extent that there is overlap, and we

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1 think there is, with respect to issues such as
2 privilege, and the scope of some of the requests which
3 are extremely extensive, yes, we do think those should
4 apply. Plus those same rulings will apply with respect
5 to whatever the referee decides on the Bills and
6 Giants, who are in New York, and those same subpoenas
7 will be in New York.

8 Our position is, your Honor, that it makes no
9 sense for all of these actions to be submitted to
10 courts around the country that do not have the
11 knowledge that this Court has of the nature of these
12 proceedings, the issues involved in these proceedings
13 that could give rise to inconsistent adjudications of
14 such issues as privilege, sensitive player information.
15 We are talking about discovery against nonparties going
16 back for sixty years on anything having to do with head
17 injury. It's very difficult and very complex.

18 And we have offered in order to avoid having
19 to be here today, we offered before making this motion
20 to consolidate everything in New York. We even agreed
21 that New York law should apply to all of the discovery
22 issues with the exception of any state laws that may
23 apply to things like personal protected information
24 related to players, which there are some individual
25 state statutes that we might have to pay attention to,

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1 but we have said we are prepared not only to do that,
2 but to agree on a schedule.

3 We have to meet-and-confer on custodians, on
4 search terms, before we do these searches because these
5 clubs, it's not really fair as nonparties to be asking
6 them to go through these searches multiple times. And
7 we just don't see why it makes any sense at all --

8 THE COURT: Why is it multiple times?

9 MR. SCHAFLE: Well, if we don't agree on
10 search terms, for example, and then we have to submit
11 it and then do the same search again -- all we said is
12 let's decide what the search terms are, let's decide on
13 who the custodians are and we will do the productions.
14 And if we have disagreements on the scope of anything,
15 we will submit them to the New York Court and we will
16 agree to be bound by the outcome.

17 THE COURT: Okay.

18 MR. SCHAFLE: Seems like an entirely
19 rational way to proceed.

20 THE COURT: Okay. Thank you so much. And
21 Mr. Carroll, Ms. Simpson, who is up?

22 MR. CARROLL: Thank you, your Honor. As I
23 understand, this is just the TRO aspect, not the actual
24 preliminary restraints aspect of the motion. But, in
25 any event, it's the same argument.

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1 They will have the ability to argue and
2 assert any privilege position that they want to under
3 the appropriate subpoena in the appropriate state.
4 And, remember, they are not just one party here. They
5 grouped them under one counsel but we have thirty-two
6 different nonparties --

7 THE COURT: I get the picture with all the
8 people in the courtroom at the moment who I am sure are
9 the attorneys for the others.

10 MR. CARROLL: Well, actually, this is just
11 the NFL's insurers.

12 THE COURT: Okay.

13 MR. CARROLL: But they have thirty-two
14 different parties that Proskauer represents in
15 twenty-two different states. And if we just go back to
16 how this all started, your Honor, you recall at some
17 point in time there was a series of motions that we had
18 filed before your Honor for commissions. And your
19 Honor ultimately granted them. The reason we needed to
20 file those motions for commissions because the NFL
21 wouldn't consent to us working together to figure out a
22 way to serve the subpoenas on the teams.

23 So we went about the process of getting
24 commissions through your Honor and then serving
25 thirty-two different teams in twenty-two different

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1 states. That's the process we had to go through. And
2 we spent the last year -- these are subpoenas that were
3 served, some of them eighteen months ago, the latest
4 was eight months ago. Last year we tried to get
5 documents from the teams represented by Proskauer.
6 We've got virtually nothing in a year and a half. We
7 don't file motions lightly. We don't want to, but we
8 had to.

9 So to stand here before your Honor and hear
10 Proskauer say it's going to be irreparable harm for the
11 Cleveland Browns to respond to a subpoena served in
12 Cleveland, a proper subpoena under Cleveland, or, Ohio
13 law on them under Ohio law, that that's is irreparable
14 harm, is absurd. This is discovery. They are not a
15 party. We just want their documents. They could
16 assert whatever privilege they want to assert. That
17 they think they somehow get the benefit of a discovery
18 dispute that was argued here between two parties that
19 are an entirely different context under New York law --

20 THE COURT: It's not entirely different
21 though.

22 MR. CARROLL: But it is, your Honor. We
23 argued privilege between us and the NFL and at issue --
24 the at issue privilege, all issues that we had before
25 you on June 14th because we raised these issues again

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1 as part of an appeal of Judge Dolinger's ruling.

2 So those have nothing to do with the teams
3 simply needing to respond to a subpoena that was
4 properly served in a jurisdiction that they said.

5 And if I could, your Honor --

6 THE COURT: Are you punishing the teams
7 though for the NFL's -- the position that the NFL has
8 taken with regard to the discovery?

9 MR. CARROLL: Not at all, your Honor. In
10 fact, Judge Dolinger said he expects that there will be
11 third-party discovery that will hopefully -- that was
12 all part of the discussion we had with Judge Dolinger.

13 THE COURT: No, I am not saying that it won't
14 yield anything, but if I understand -- and I did just
15 look at this quickly because you just walked in, but --
16 and just for the record it's 9:51.

17 It seems, if I understand the nonparties'
18 position correctly, they want to be within this
19 jurisdiction and do everything in one place which seems
20 efficient. So I am not sure what your objection is.
21 Why not just take care of everything here?

22 MR. CARROLL: Because we had to -- we already
23 have been put through the process of serving --

24 THE COURT: Right. So that is the point.
25 Now you are punishing them because the NFL wouldn't

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1 agree.

2 MR. CARROLL: It's not a punishment issue,
3 your Honor; it's an entitlement issue. We filed a
4 proper subpoena in another jurisdiction. What they are
5 asking your Honor to do is arrest from that
6 jurisdiction control of that subpoena. Under that
7 rationale, in every case that your Honor has, every
8 subpoena in every other jurisdiction should fall back
9 onto this Court. And that certainly -- there is no
10 case law in New York that suggests that.

11 THE COURT: But we are doing it on consent.
12 That is the difference. I am not taking anything from
13 anyone. They are asking to come into this action --

14 MR. CARROLL: This is eighteen months later.
15 Because they understand how slow the process has been
16 for us, this is seven years into the case, your Honor,
17 and we got virtually no discovery. They understand
18 what will happen. It's simply to delay things.

19 By the way, the proposal that they suggested,
20 was a staggered proposal of do this, do that. It will
21 be four or five months down the road. If I could just
22 read one passage, your Honor, and it's in the brief.
23 And I apologize for submitting the brief so late.

24 THE COURT: So late? It's 20 to --

25 MR. CARROLL: I know. I understand. It was

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1 served on Friday. So we have worked over the weekend
2 to get the opposition documents to your Honor. If I
3 can just read --

4 THE COURT: Oh, that is the letter you just
5 handed me?

6 MR. CARROLL: Yes, your Honor. And obviously
7 we could refile that as a pleading, but --

8 THE COURT: Not at a pleading.

9 MR. CARROLL: As a response.

10 THE COURT: In the form of a Memo of Law.

11 MR. CARROLL: We got a lot of insurers that
12 we have to coordinate with which we did over the
13 weekend.

14 But, if I could, your Honor, this is from the
15 teams. And this is in October 2018. And this is a
16 quote. "It's important to note that the thirty-two
17 nonmember teams reside in twenty-two different states,
18 each with their own discovery rules and laws. Nonparty
19 discovery varies widely and the nonparty clubs tend to
20 take full advantage of those laws in the event they are
21 subject to motion practice." That is them saying that
22 seven months ago. Basically, you will have to deal
23 with this state by state. And we have. And we are
24 dealing with it state by state. And, your Honor, from
25 our perspective, I got hearing dates set in certain

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1 jurisdictions. We are moving quickly. And that's what
2 we need. We have discovery deadlines before your Honor
3 that are not being met. And so I have a client who is
4 saying to me, Chris, we need these documents. So we
5 are doing this in the fastest possible way because we
6 think that's the best way to proceed and will get us
7 the documents sooner, quicker, faster so we could be
8 before your Honor prepared to adjudicate this case.

9 If we have anymore delays, and you will hear
10 about this on June 14. This is a process of delay,
11 delay, delay. We need to proceed. We have dates
12 scheduled in these different jurisdictions. And,
13 again, your Honor, there is no case that they could
14 cite to your Honor where a New York court said to
15 another state I am taking the case, I am taking that
16 subpoena from you and I will deal with it here.
17 Especially when there is --

18 THE COURT: The parties wouldn't -- the
19 parties could agree to it.

20 MR. CARROLL: The parties could agree to
21 anything they wanted to, I suspect. But my entitlement
22 is to proceed on those subpoenas in due course because
23 that's the way we want to; that's the process we
24 believe will be in the best interests of our client.
25 And just because they say we want something entirely

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1 different now, it doesn't make it -- forget the fact
2 that it doesn't make it irreparable harm, it doesn't
3 make it proper process. This is discovery. They are
4 not parties. All they are being asked to do is produce
5 documents. That's it. Raise the privilege you want to
6 raise, deal with the subpoena, that's all.

7 This is not an irreparable harm issue. It's
8 what we feel is in the best interests of our client
9 after eighteen months --

10 THE COURT: I heard the eighteen months. You
11 could have a seat. Thank you so much.

12 MR. DOLIN: Your Honor, may I speak briefly
13 for the NFL and NFL Properties? Mitchell Dolin. I
14 just want to make a few points.

15 It's not my motion. But we are supportive of
16 the motion. We think it makes sense to consolidate
17 everything. And your Honor asked one of the counsel a
18 question about the referral order. And I think the
19 motion seeks to refer these matters to your Honor for
20 your Honor to decide whether then to refer them on to
21 the --

22 THE COURT: No, I understand that. My
23 understanding from my quick reading of this is they
24 want to basically tag along with whatever Dolinger
25 already ordered. I think it was an eighty page --

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1 MR. DOLIN: Right. The --

2 THE COURT: Can you stop for one second?

3 It's not in the papers I have today, but did
4 anyone send me the Dolinger Decision? Or can you send
5 it to me?

6 MR. DOLIN: It was lodged -- the date is
7 referred to in your papers.

8 MR. HOLINSTAT: It's docket number 509.

9 THE COURT: In my docket? Oh, okay.

10 MR. DOLIN: Well, there are two dockets.

11 MR. HOLINSTAT: I believe in the 8/13. The
12 top number.

13 THE COURT: Okay.

14 MR. DOLIN: In any event, your Honor, the two
15 motions that involve New York clubs, the Bills and the
16 Giants, the insurers filed those motions to compel and
17 lodged them directly with Special Referee Dolinger. I
18 think -- we think it's the Court's judgment of whether
19 these motions and the other motions that your Honor
20 grants the relief of applicants, whether they go to
21 your Honor or get referred to Special Referee Dolinger.

22 Our view is the party is the -- the NFL, we
23 think it makes sense to consolidate it in the courts.
24 Some of the relief sought in these motions does
25 implicate the NFL and there are thirty-six separate

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1 requests in most of these subpoenas, all but one of
2 which is prefaced by the word "all." These are not the
3 sorts of discovery requests that yield orders to compel
4 in toto which is what the insurers are seeking.

5 I will quote one of them to your Honor that
6 implicates the NFL rather directly. "All documents and
7 communications between the Bills and the NFL regarding
8 strategy for the defense of the MDL action", that on
9 its face implicates privilege. The NFL, as your Honor
10 knows, is a membership association of the thirty-two
11 clubs. The NFL has the ability to communicate with its
12 clubs in a manner that preserves the privilege. As
13 Mr. Carroll mentioned, the privilege -- there is a
14 privilege matter decided on the motion by Special
15 Referee Dolinger as a result of the appeal by the
16 insurers will be before this Court in June.

17 For all of the reasons that Proskauer
18 mentioned; process, efficiency, this Court's expertise,
19 we submit that it's appropriate to consolidate.

20 Thank you.

21 MR. SIMPSON: Your Honor, may I be just heard
22 briefly on Mr. Dolin's point? They seek to reference
23 this privilege issue. But every single one of the
24 motions we filed to date has what proposed order that
25 only seeks to compel them to produce non-privileged

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1 documents. We just want them to produce what they feel
2 is not privileged. If there is a fight that remains
3 after that, we could deal with that. We had extensive
4 meet-and-confer efforts with them over the last many
5 months. I will not reference the amount, as your Honor
6 knows.

7 And we sought to do these exact things that
8 they are asking now; search terms, custodians. We
9 sought to do that many months ago. And it wasn't until
10 we filed these motions that they came back to us with
11 this proposal. There is no irreparable harm. Produce
12 the documents. You are sophisticated corporations.
13 You have documents. You have sophisticated counsel
14 that could help you through that process. That's what
15 we want.

16 We are not asking for anything that -- if
17 they believe it's not produceable, they won't produce
18 it. And out of thirty-two teams we've only gotten
19 documents from fourteen and it was a handful of
20 insurance-related documents.

21 THE COURT: Okay. Got it. Anyone else?

22 MR. SCHAFER: May I respond briefly, your
23 Honor? I don't want to get too much back into history,
24 but the idea that the insurance companies met and
25 conferred with us in good faith and we didn't do

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1 anything is simply not true.

2 We were never able to get to a place where we
3 were able to get any compromise by the insurance
4 companies on anything. All they ever said was we will
5 start with this and then we reserve our right to get
6 everything else. And when we didn't hear from the
7 insurance companies after we kind of got to the end of
8 our fruitless meet-and-confer process and they said,
9 you know, we are going to do something if you don't
10 produce documents. They went into hiding for a period
11 of close to six months.

12 In the meantime, Judge Dolinger issued his
13 rulings which addressed many issues that we think are
14 very relevant to what the clubs are going to be
15 required to produce. And we assumed that what was
16 happening was that they were going to meet-and-confer
17 with us on what Judge Dolinger had to say or what this
18 Court would have to say. And we, as nonparties, would
19 be able to conform what our discovery would be in light
20 of those rulings.

21 Instead, what happened was that the insurance
22 companies went out and filed all of these motions
23 without so much as a phone call that any of this was
24 happening, without any mention of what Judge Dolinger
25 had done with his eighty-one page decision. We think

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1 that that was wrong.

2 And in terms of the efficiency, first of all
3 it's the insurance companies that chose this forum.
4 It's kind of odd for them to try to get away from it
5 and go to some other place to get rulings on discovery
6 but --

7 THE COURT: Here is the thing.

8 MR. SCHAFLE: Yes.

9 THE COURT: I can't help but feel that you
10 are asking me to force them to agree to what is a
11 perfectly legitimate request. And perfectly
12 reasonable. And, yes, they did select this forum, but
13 I can't force them to agree to something.

14 MR. SCHAFLE: Well, your Honor, first of
15 all, let me just react to the idea that they are trying
16 to present this as us trying to restrain proceedings in
17 other states. That is not what we are trying to do.

18 The CPLR 3103-a is the provision that we are
19 acting under. It is a procedure that allows the Court
20 on the motion of any party, and we are certainly a
21 party and I think --

22 THE COURT: Well, you can't be a party and a
23 nonparty.

24 MR. SCHAFLE: Any person, I should say, your
25 Honor. I misspoke. 3101-a says that any person,

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1 whether any party or nonparty come into this court and
2 on a showing that the discovery is unreasonable,
3 annoyance, expense, embarrassment, disadvantage or
4 other prejudice to any person or party, but it doesn't
5 have to be a party, that we could come to this court
6 and say, your Honor, this makes no sense.

7 And, really, that's what we are doing here.
8 We are saying to this Court you have jurisdiction over
9 the parties. We are not restraining other courts from
10 doing anything. We are asking you to order these
11 parties that are before this Court that have chosen
12 this Court to adjudicate their dispute, to adjudicate
13 their rights with respect to discovery of nonparties in
14 this action by this Court. Usually the cases go the
15 other way --

16 THE COURT: Shouldn't you be having this
17 conversation with the NFL?

18 MR. SCHAFLER: Shouldn't -- sorry?

19 THE COURT: Shouldn't you have this
20 conversation with the NFL?

21 MR. SCHAFLER: Shouldn't we be?

22 THE COURT: Yes.

23 MR. SCHAFLER: I don't understand why --

24 THE COURT: Because they're the other party
25 in this action and they are the ones that could agree

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1 to this with plaintiff. Or plaintiffs. Right? They
2 are the parties.

3 MR. SCHAFER: Well, I think they do agree
4 that this should all be consolidated in this Court. I
5 am not sure what you mean when you say they could agree
6 with the insurance company. The insurance companies
7 are no more going to agree on this with the NFL and
8 agree -- I think what the insurance companies are doing
9 is basically trying to use these proceedings in other
10 states as a way to get around whatever the reasonable
11 restrictions and rulings that this Court will make, or
12 has made on the scope of discovery in this action.

13 They are looking at that as a way to get
14 around this Court's management of the case. And the
15 idea that that's more efficient, that they will get
16 rulings faster in some other state, what is going to
17 end up happening, they will have appeal processes in
18 thirty-two -- against thirty-two clubs in eighteen
19 different states, with inconsistent rulings, all the
20 over the place about the exact same documents.

21 So, you know, we are coming in here and
22 saying this is what we want. Usually the laws are
23 designed to protect the interests of the nonparties.
24 Right? They are designed to say we shouldn't be
25 required to be dragged in here.

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1 The Kansas City Chiefs shouldn't have to
2 adjudicate their rulings in New York. They should be
3 able to do that in Kansas City. That's their home
4 court. We are saying no, we are happy to do that, we
5 want to do that, and ready to do that. And the
6 insurance companies are saying no. It's -- there is no
7 reason for it. There is no rational reason for it
8 other than purely to impose costs.

9 Your Honor said punishment. That is exactly
10 what they are trying to do. And they pose it as if
11 they are trying to be reasonable, but in reality what
12 they are doing is trying to create confusion, cost,
13 inconsistent adjudications, all across the country with
14 respect to the same documents.

15 So 3103, your Honor, is what our authority
16 is. We think the Court has the authority to do that.
17 We think there's been sufficient showing at least at
18 this stage of irreparable harm. We are asking this
19 Court to enter into an Order until it could be heard on
20 merits to stop this from going forward. They went out
21 and they got an Order in Indiana that we didn't even
22 have an opportunity to respond to, to force us to
23 produce everything within thirty days. We didn't even
24 have an opportunity to respond. That is what is going
25 to happen here. The courts that know nothing about

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1 this case and --

2 THE COURT: Hold on. What?

3 MR. SCHAFER: They got an Order out of a
4 court in Indiana --

5 THE COURT: Oh, the commission.

6 MR. SCHAFER: They took it to Indiana. The
7 Indiana Court on the same day that the motion was filed
8 granted the Order without giving us any opportunity to
9 respond at all.

10 THE COURT: Okay.

11 MR. SCHAFER: At all.

12 THE COURT: And there is no Due Process in
13 Indiana?

14 MR. SCHAFER: This is the problem. These
15 courts do not have the underlying action. They don't
16 know what the issues are. They are just saying, oh,
17 some discovery issue, we will just grant the motion.

18 THE COURT: And are you saying that --

19 MR. SCHAFER: It should be decided by this
20 Court.

21 THE COURT: Isn't that the process that they
22 followed for commissions? Are you saying that they are
23 treating you in a special way?

24 MR. SCHAFER: No, that's the procedure they
25 follow for commissions.

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1 THE COURT: And it's your job to file a
2 motion and object to that.

3 MR. SCHAFER: We are doing that. We are
4 doing more than that. We are saying it should
5 consolidated because it effects your Honor's control
6 over this litigation. Your Honor has this litigation
7 before you. Your Honor has appointed a Referee to
8 decide on the discovery issues with the intention that
9 that Referee will develop the knowledge and expertise
10 to determine how to adjudicate the relevant discovery
11 issues in this case. This should be part of it. It's
12 going to be part of it.

13 The Giants and Bills are already part of it.
14 There is no way that Judge Dolinger is not going to
15 rule on this. It makes no sense to ask some other
16 court to rule who knows nothing about this case, to
17 adjudicate the entire issue which that court doesn't
18 know anything about --

19 THE COURT: Let -- can you stop for one
20 second? Have a seat. Just have a seat.

21 If I were to adjudicate the issues with the
22 Giants and Bills immediately, and the other nonparty
23 teams agreed to go along with whatever the rulings are
24 in those cases, is that something that you could stand
25 down in the other states while we do this if I say that

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1 we will do that part of it expeditiously? You see what
2 I am saying?

3 MR. CARROLL: I do understand what your Honor
4 is saying. Again, from our perspective we chose a
5 litigation route that we think is within our client's
6 best interests.

7 THE COURT: You just said before it was
8 imposed upon you by the NFL because they wouldn't agree
9 to discovery. You either chose it or it --

10 MR. CARROLL: Your Honor, but that is to give
11 context as to why we are here. That is not to say we
12 wouldn't have done it anyway. We would have gone
13 through an easier process and negotiated and went
14 through things differently.

15 In any event, to answer your Honor's
16 questions, that doesn't. Because the Cleveland Browns
17 are governed under a subpoena by Ohio law. And I don't
18 know what the law will be. It could be to my
19 detriment. In any event, we are proceeding faster
20 there and we want to proceed. We could voluntarily do
21 a whole bunch of things. We don't think we have to do
22 that.

23 THE COURT: So where are we with the
24 subpoenas with the Giants and the Bills? Where are we?

25 MR. SIMPSON: Your Honor, we submitted those

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1 to Judge Dolinger on April 5th. And he initially set a
2 briefing schedule and counsel for the Bills and Giants
3 asked for more time and I don't believe that has been
4 -- their request for more some time has not been
5 completed so there is no schedule for briefing on that
6 right now.

7 THE COURT: And what was the original
8 proposal?

9 MR. SIMPSON: On the briefing?

10 THE COURT: Yes.

11 MR. SIMPSON: He had asked for opposition by
12 April 26th, and I think replies by the 29th. Or --
13 around that. It was a short time frame.

14 MR. SCHAFER: Your Honor, we would be
15 prepared to agree to something along the lines of what
16 your Honor suggested. We think that if they want to
17 fast track the determinations with respect to the Bills
18 and Giants, and --

19 THE COURT: Well, it sounds like Dolinger did
20 that already.

21 MR. CARROLL: Well, it hasn't been agreed to
22 yet. They haven't agreed to dates yet. Judge Dolinger
23 proposed dates.

24 THE COURT: The April 26th and April 29th
25 dates.

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1 MR. CARROLL: Right.

2 THE COURT: And you didn't put in your op yet
3 with the -- for the Bills and Giants?

4 MR. SCHAFER: No, not yet. We wanted to
5 meet-and-confer with the insurance companies initially
6 to see if they would agree to consolidation. We wanted
7 to bring everything from Judge Dolinger and brief it
8 all at the same time, and so we came up with this
9 proposal --

10 THE COURT: As I understand, and I did look
11 at your papers quickly, but aren't you saying that the
12 subpoenas are similar?

13 MR. SCHAFER: Virtually identical.

14 THE COURT: Okay.

15 MR. SCHAFER: The only differences between
16 them, if one particular team had a particular player
17 that had a head injury that they know about, they might
18 want to ask something about that player. Other than
19 that, they are boilerplate, every single one is the
20 same. So the issues will be the same.

21 MR. CARROLL: Your Honor, if I could, your
22 Honor raised an issue with counsel before about what
23 the legal authority of this Court is to do what he is
24 asking you to do. And you -- and referred to 3103-a
25 and -- 3103-a refers to burden and harassment and all

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1 the typical things that --

2 THE COURT: I don't think I have burden and
3 harassment in here. But I do have -- I do have, you
4 know, a large unwieldy case that I'd like to find a way
5 to organize it.

6 MR. CARROLL: I understand that, your Honor.

7 THE COURT: But that is all on consent.
8 It's not -- I don't think you have what you need to get
9 a TRO. That is for sure. But we should be able to
10 work something out.

11 MR. CARROLL: Your Honor, I presume your
12 Honor will set a briefing schedule on the preliminary
13 injunction aspect of it. We could continue to confer
14 in the interim, and we will. And if something works
15 out, obviously we will report back to your Honor. But
16 from a TRO perspective, we just don't see it.

17 THE COURT: Right. What if the nonparty
18 teams were to produce the documents to which they have
19 no objection?

20 MR. CARROLL: That would be a fantastic start
21 to a process that might be something that we could then
22 work out, your Honor.

23 THE COURT: I can't help but feel that --
24 that you are using this iss ue to bring all the teams
25 before Dolinger. Why not just produce the documents

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1 which you don't object to? Why not do that now?

2 MR. SCHAFLER: We want to do that.

3 THE COURT: They will take them.

4 MR. SCHAFLER: We have to have an agreement
5 on what the search terms are and who the custodians
6 are. And they refused to agree to that. That was part
7 of our proposal. We said we will by May 10th -- we
8 gave them a specific date. We said by May 10 on every
9 one of these thirty-two we will give you the custodians
10 and accept the search terms that Judge Dolinger agreed
11 to in his eighty-one page ruling, and if there is
12 anything, you know, other than that that is specific to
13 the clubs, we will talk to you about that.

14 So we have said that. And if I may, your
15 Honor, and I do this with some trepidation because your
16 Honor has already said that you don't think you have
17 sufficient annoyance, burden, prejudice, et cetera, and
18 I -- with all due respect I really do think that you
19 do. And if you look at the cases, particularly the
20 Federal cases that talk about this because it happens
21 all the time, the possibility of subjecting parties to
22 inconsistent adjudications and discovery obligations,
23 especially when they are nonparties is the poster child
24 of what this type of motion is about, and what this
25 statute is intended to do.

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1 And especially when you have a party that's
2 saying we are prepared to bring it into this court, and
3 to abide by the rulings of this court, what possible
4 reason could there be other than to impose unreasonable
5 time frames, obligations, try to get an advantage from
6 other courts that are not familiar with these issues?
7 What other possible reason could there be besides the
8 very type of vexatious conduct that this statute is
9 intended to protect against?

10 So, with respect, your Honor, and I am not
11 trying to argue with you lightly, but I feel that --
12 you are correct in being concerned about your
13 jurisdiction here and the power to do this and whether
14 these are circumstances that warrant it, but I would
15 say that, yes, you do have this --

16 THE COURT: This is a -- isn't the risk of
17 inconsistent decisions coming from, you know, if they
18 ask for a particular football player's records or -- I
19 see someone shake his head no, no, no. You want to
20 stand up and tell me what your argument is, that would
21 be a lot better than shaking your head no, no, no.

22 MR. HOLINSTAT: Your Honor, if the Jets on
23 the one hand have documents that they shared with the
24 Bills, especially privileged documents --

25 THE COURT: They are not asking for

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1 privileged documents though.

2 MR. HOLINSTAT: The difference is -- there is
3 a difference as to what they are. They are asking for
4 any and all documents shared among the teams. So if
5 you have documents in one jurisdiction, and New Jersey
6 said to the Jets, you don't have to produce any of
7 these documents, your Jets documents that you have,
8 they are not relevant and you don't have to produce
9 them. Then they go to Missouri and say, well, your --

10 THE COURT: I understand what inconsistent
11 means.

12 Thank you. Have a seat. Thank you.

13 MR. CARROLL: Your Honor, and I will be
14 brief. They still will be represented by the same
15 counsel taking the same position. There will certainly
16 be symmetry in terms of what they want to do.

17 If I could just briefly on the Federal case
18 law, all the Federal jurisdictions are governed by the
19 Federal Civil Procedure. 45(f) allows the Court to do
20 exactly what they are asking the Court to do here.

21 The problem here is, New York is different
22 than California, Ohio, Florida. If the teams would
23 simply produce -- we are okay with the search terms.
24 We were okay with the search terms. Let them produce
25 the documents that they have. If we feel it's

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1 appropriate, we will work something out, your Honor. I
2 am not interested in litigating all around the world if
3 we don't have to. I want a faster, cheaper, better way
4 to get there. We think this is the way to do it. We
5 think that is what got them here and hopefully will
6 then motivate them. But if your Honor just tells them
7 to produce the documents and then we could figure out
8 if we need to continue with the briefing and come back
9 before your Honor. That would go a long way, we think,
10 in getting us what we need.

11 THE COURT: What I would need from you to get
12 to that point is that you would stand down for thirty
13 days while they do that. If I understand you
14 correctly. You will do the search. You will produce
15 the documents to which you don't agree. Right?

16 MR. SCHAFER: Yes, your Honor. By the way,
17 we did ask them for an across the board thirty day
18 tolling period or what have you. And they didn't
19 previously --

20 THE COURT: You know what, here is the thing;
21 we are here now. I don't care what you offered before.

22 MR. SCHAFER: Okay. Yes.

23 THE COURT: Right now I have all of you here.
24 So that is nice and thank you very much. And, oh,
25 where is the little sign on the table about being good

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1 to each other and respectful? So I appreciate that.
2 And it means a lot to me in all of my three hundred
3 fifty cases that the parties treat each other this way.
4 But here we are.

5 So, if the plaintiffs would agree to -- these
6 are the search terms that you have proposed to the
7 nonparties? They have that?

8 MR. SIMPSON: Your Honor, we did propose
9 search terms six months ago and we didn't make any
10 progress with them. I get it, we are not talking about
11 the past. But I just want to add that Mr. Schafler has
12 more recently proposed using the search terms from
13 Judge Dolinger's opinion. The majority of those are
14 applicable here, but because the teams have specific
15 players we believe there would be a few more team
16 specific that would have to be added.

17 THE COURT: So what about agreeing to the
18 general -- step one; general. We will do the specific
19 players separately, or you could make up a list, a
20 supplemental list of particular players. But for now
21 they do a search using Dolinger's terms.

22 MS. SIMPSON: I think that would be a great
23 first step. I think one thing we would also need to
24 clarify with them is location of searches. Obviously
25 our subpoenas go well beyond ESIs and e-mails and

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1 things like that. If they have hard copy files, if
2 they have old databases, we would need to work around
3 the parameters. I think that it would be a very good
4 step.

5 MR. CARROLL: Your Honor, if we could do that
6 and get them to produce their documents in the next
7 thirty days, I would be prepared to recommend to my
8 colleagues that we stand down for thirty days.

9 MR. SCHAFER: Better than where we are right
10 now, your Honor. We will be happy to proceed on that
11 basis.

12 THE COURT: So you would begin with the
13 Dolinger terms and produce the documents immediately,
14 to which there are no objections. And then plaintiffs
15 will provide you with a list of specific per team,
16 right? Regarding specific players.

17 They are not seeking -- just to be clear, you
18 are not seeking privilege HIPA --

19 MR. CARROLL: That's correct.

20 THE COURT: -- issues. So that is --

21 MR. SCHAFER: That was not clear to me
22 before but I am happy to hear that.

23 MR. CARROLL: With the understanding, your
24 Honor, that if need be, we could then come back to your
25 Honor in thirty days and revisit where we are?

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1 THE COURT: The privilege and the HIPA?

2 MR. CARROLL: No. No. The production and
3 where we are in connection with the rest of whether we
4 will have to do something else on the Order to Show
5 Cause. If, for example, they produce five documents we
6 will have issues and concerns and problems. We will
7 need to address whether we are going to proceed in
8 other jurisdictions. We are standing down for now but
9 not giving up the right to proceed in those other
10 jurisdictions. If we feel we need to, and if your
11 Honor ultimately rejects the Order to Show Cause. But
12 that's a fight for a different day.

13 THE COURT: Well, I wouldn't be able to
14 determine that anyway.

15 MR. CARROLL: Understood.

16 THE COURT: Until I get arguments from both
17 sides and give you an opportunity to reply to their
18 papers anyway. If we could avoid all of that, that
19 would be much better.

20 MR. CARROLL: Understood, your Honor.

21 THE COURT: Okay. Let's talk about dates.
22 So you basically put together your
23 opposition, right?

24 MR. CARROLL: Yes, your Honor.

25 THE COURT: So we are only talking about a

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1 reply?

2 MR. CARROLL: That is just on the TRO.

3 THE COURT: Okay. So you want to put in an
4 op, right?

5 MR. CARROLL: On the Order to Show Cause
6 aspect of it?

7 THE COURT: The preliminary injunction which
8 shouldn't be that different from the TRO.

9 MR. CARROLL: Within ten days please.

10 THE COURT: Okay. Sure. Then how much time
11 do you want for a reply? That gives you -- that gets
12 you to May 13.

13 MR. SCHAFER: Seven days, your Honor.

14 THE COURT: So that gets you to the 20th.

15 So you could have May 23rd at 3:00 for
16 argument.

17 MR. CARROLL: Your Honor, could I suggest if
18 we could have the next available date after May 29 --

19 THE COURT: Yes. And you have June 13th,
20 right?

21 MR. SIMPSON: June 14th.

22 MR. HOLINSTADT: 14th.

23 MR. CARROLL: We are actually arguing the
24 appeals from Judge Dolinger's rulings.

25 THE COURT: Maybe we should just save this.

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1 MR. CARROLL: That would be great. If we
2 could have a date by which to produce their documents.
3 And we are fine with June 13th.

4 MR. DOLIN: Sorry. 14th, right?

5 MR. CARROLL: June 14th. Sorry.

6 THE COURT: I have 11:30 to 1:00. Okay. So
7 let's work back from there.

8 MR. DOLIN: Your Honor, on the preliminary
9 injunction motion, may the NFL file the supporting
10 papers on the same schedule --

11 THE COURT: Sure.

12 MR. DOLIN: Thank you, your Honor.

13 THE COURT: So May 17 for the op and May 31
14 for the reply.

15 (Brief pause.)

16 THE COURT: May 31st for the op and June 7th
17 for the reply. So you have the Dolinger's Decision
18 with the search terms, right?

19 MR. SCHAFER: Yes.

20 THE COURT: So how long will it take you to
21 work with the other teams to make your first search?

22 MR. SCHAFER: Well, we'll start working on
23 that right away, your Honor. Each team is a little
24 different in terms of their capabilities, their
25 electronic make-up and such. So we will, you know,

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1 make maximal efforts with every one of these thirty-two
2 teams.

3 THE COURT: So May 13th you could do that?

4 MR. SCHAFER: To begin production?

5 THE COURT: To make the production consistent
6 with the Dolinger terms.

7 MR. HOLINSTAT: Your Honor, we will certainly
8 get the custodian to run the searches. In terms of how
9 the documents could be done, we would offer rolling
10 production. If it's ten million documents versus five
11 thousand, it just depends on how many documents there
12 are. We offered this before to do this on a rolling
13 basis --

14 THE COURT: See, the problem I have with a
15 rolling basis is if you would just produce the
16 documents to which there is no objection, the rolling
17 basis meaning you have to review the ten thousand or --

18 MR. HOLINSTAT: Yes, your Honor.

19 THE COURT: And you will roll it as you
20 review them?

21 MR. HOLINSTAT: Yes, your Honor. And the
22 idea is we have to search for privilege anyway to take
23 it out and we would continue to produce them as they
24 come out.

25 MR. CARROLL: Your Honor, to make it easy,

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1 can I suggest they produce everything by June 1st as
2 opposed to rolling basis? That will give us two weeks
3 to evaluate it --

4 THE COURT: Sure.

5 MR. CARROLL: I would love it sooner but I
6 want to be practical. Your Honor says please treat
7 your adversary with dignity and respect. So we want to
8 do that. We are not here to make things difficult. So
9 if that helps.

10 THE COURT: And just to be clear, you are
11 agreeing to the jurisdiction of this Court for the
12 purposes of this discovery matter? All these
13 subpoenas; is that correct?

14 MR. SCHAFLER: That is correct, your Honor.
15 Of course we would be doing that on the basis that they
16 were not going to be proceeding simultaneously in all
17 these other jurisdictions --

18 THE COURT: They are agreeing to it and based
19 on your consent I will sign the TRO --

20 MR. CARROLL: We were agreeing to stand down
21 for the time period --

22 THE COURT: Until June --

23 MR. CARROLL: Well, until we argue before
24 your Honor if we have to argue before your Honor.

25 THE COURT: So between now and June 14th

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1 there is a stay on proceeding to the extent I could
2 control the one party before me. So there will be that
3 stay on consent. But your part of this is to produce
4 the documents, and to agree to the Court's
5 jurisdiction, even though those nonparties are not
6 before this Court.

7 MR. SCHAFLE: Yes, your Honor.

8 THE COURT: So I think I would want something
9 from them agreeing to that.

10 MR. SCHAFLE: We have said that in our
11 papers, but if you need something from me --

12 THE COURT: I understand you said it.

13 MR. SCHAFLE: I represent him. I said it.

14 THE COURT: I think I need something where
15 they agree to the Court's jurisdiction.

16 MR. SCHAFLE: Okay.

17 MR. CARROLL: And, your Honor, I think
18 technically, we will do what your Honor feels
19 appropriate, but I don't think granting the TRO is
20 right because there is no verbal irreparable harm. I
21 think a consent to the stay is what the appropriate
22 process is here.

23 THE COURT: Right. I am not granting it
24 based upon the statute. I am granting it based upon
25 your consent.

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1 MR. CARROLL: Fair enough. Appreciate it.

2 THE COURT: I will make that clear in the

3 TRO.

4 MR. CALENDAR: Your Honor, Shane Calendar for
5 Chubb. One thing. For the reply on June 7th, to the
6 extent that the NFL is going to be filing papers, the
7 insurers also have a chance to respond to the papers on
8 the June 7th --

9 MR. SIMPSON: Your Honor, could we just run
10 through those dates once more? I wrote down May 17th
11 for the op and May 31st for the reply --

12 THE COURT: No, no. I changed it. May 31st
13 for the op. And June 7th for the reply. I changed it.

14 MR. DOLIN: Your Honor -- NFL has responded
15 which is why we asked for the same dates as the
16 insurers. We are happy to file our response seven days
17 in advance from when the insurers have to respond. So
18 if Mr. Calendar wants to say something --

19 THE COURT: So you will use the May 31st
20 date?

21 MR. DOLIN: No, I was saying I will do it
22 seven days earlier, so if the insurers want to say
23 something about our paper --

24 THE COURT: May 31st.

25 MR. CARROLL: May 24th?

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1 MR. DOLIN: I was offering May 24.

2 THE COURT: Oh.

3 MR. DOLIN: So they get my -- the NFL's seven
4 days before the --

5 THE COURT: Okay.

6 MR. DOLIN: And they will know what I said.

7 THE COURT: I understand. Thank you.

8 Anything else?

9 MR. SCHAFLEER: No, your Honor. Thank you.

10 MR. HOLINSTADT: Thank you.

11 MR. CARROLL: Thank you, your Honor.

12 THE COURT: Okay. So to be clear, you will
13 get me something from the nonparties, simple
14 stipulation.

15 MR. SCHAFLEER: Yes.

16 THE COURT: Okay. I will reference this
17 transcript in the Order that I am signing. And just
18 because the ECF system is a little slow, I will ask
19 that one person stay so that we could give you a copy
20 of it and you could circulate it. Because there is a
21 two or three week lag for some reason with things going
22 on.

23 MR. CARROLL: Thank you, your Honor.

24 THE COURT: Okay. And you could circulate
25 it.

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1 MR. CARROLL: Thank you, Judge.

2 MR. DOLIN: Thank you, your Honor.

3 * * * *

4
5 Certified to be a true and accurate
6 transcript of the stenographic minutes taken within.

7 -----
8 Tal R. Hahn,
9 Senior Court Reporter

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